

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re OPENWAVE SYSTEMS, INC.,
SHAREHOLDER DERIVATIVE LITIGATION

No. C 06-03468 SI

**ORDER GRANTING DEFENDANT'S
MOTION FOR ENTRY OF JUDGMENT**

This Document Relates To:

ALL ACTIONS.

Nominal defendant Openwave Systems, Inc., has filed a motion for entry of judgment. The motion is scheduled for hearing on August 15, 2008. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument, and hereby VACATES the hearing.

Defendant's motion comes after the Court has twice dismissed plaintiffs' complaints for failure to plead demand futility. The Court granted plaintiffs leave to file a second amended complaint, but plaintiffs chose not to do so. Instead, plaintiffs chose to serve a demand on Openwave's board of directors. Defendant now asks the Court to enter final judgment in this case pursuant to Federal Rule of Civil Procedure 58(a). Defendant's motion is unopposed, and the Court agrees with defendant that it is appropriate to enter final judgment because plaintiffs are now pursuing a demand and have declined to proceed on a demand futility theory. If plaintiffs decide to proceed instead on a theory that the board of directors wrongfully refused a demand, they may file an appropriate action at that time. For these reasons, the Court hereby GRANTS defendant's motion for entry of judgment.

IT IS SO ORDERED.

Dated: August 4, 2008



SUSAN ILLSTON
United States District Judge

United States District Court
For the Northern District of California

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